

# **Exhibit 2**

OUTSIDE COUNSEL'S EYES ONLY

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4 CALIFORNIA BERRY CULTIVARS, LLC, )  
5 )  
6 Plaintiff, )  
7 ) Case No.  
8 vs. ) 3:16-cv-02477-VC  
9 )  
10 THE REGENTS OF THE UNIVERSITY OF )  
11 CALIFORNIA, a corporation, )  
12 )  
13 Defendant. )  
14 )  
15 )  
16 THE REGENTS OF THE UNIVERSITY OF )  
17 CALIFORNIA, a corporation, )  
18 )  
19 Cross-Complainant, )  
20 )  
21 vs. )  
22 )  
23 CALIFORNIA BERRY CULTIVARS, LLC, )  
24 DOUGLAS SHAW, and KIRK LARSON, )  
25 )  
Cross-Defendants. )  
\_\_\_\_\_)  
15  
16 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF  
17 JOSE PELLICER  
18 San Francisco, California  
19 Tuesday, March 7, 2017  
20 Volume I  
21 \*\*\* OUTSIDE COUNSEL'S EYES ONLY \*\*\*  
22  
23 Reported by:  
24 CARLA SOARES  
25 CSR No. 5908  
Job No. 2555533  
Pages 1 - 110

OUTSIDE COUNSEL'S EYES ONLY

1 JOSE PELLICER ESPANA, 07:25:45  
2 having been administered an oath, was examined and  
3 testified as follows:  
4 THE VIDEO OPERATOR: Please begin.  
5 THE INTERPRETER: This is the interpreter 07:26:44  
6 speaking.  
7 In accordance with Assembly Bill 2370,  
8 effective as of January 1st, 2015, I am obliged to  
9 make the following statement on the record:  
10 My name is Francisco Hulse. I'm a 07:26:57  
11 Certified Court Interpreter of Spanish and English  
12 certified by the Judicial Council of California. My  
13 certification number is 301362. I've been in the  
14 language services industry for 21 years.  
15 EXAMINATION 07:27:11  
16 BY MR. EWERDT:  
17 Q Hello, Mr. Pellicer.  
18 A Good morning.  
19 Q Do you understand that the University of  
20 California served a subpoena on International 07:27:47  
21 Semillas, LLC?  
22 A Can you repeat the question?  
23 Q Do you understand that the University of  
24 California served a subpoena on International  
25 Semillas, LLC? 07:28:12

Page 10

OUTSIDE COUNSEL'S EYES ONLY

1 Q Did International Semillas pay for the 08:17:25  
2 strawberry crosses that were carried out in 2014?

3 MR. LIPPETZ: Objection. Form.

4 MR. LAMBAS (Interpreted): Sorry. The  
5 first part of the question we haven't understood. 08:18:02

6 MR. EWERDT: What didn't you understand?

7 MR. LAMBAS (Interpreted): All we heard of  
8 the question here was the part about 2014, but we  
9 didn't hear the prior part of the question before  
10 that. 08:18:33

11 BY MR. EWERDT:

12 Q Did International Semillas pay for the  
13 strawberry crosses that were carried out in 2014?

14 A As far as I know, what Javier Cano has  
15 mentioned to me is that there wasn't anything paid 08:19:53  
16 for those crosses. Rather, they were done by a  
17 group of people who worked with him or friends of  
18 his.

19 They were -- well, the impression that I  
20 get of these crosses is that they were not a large 08:20:14  
21 volume. They weren't very big or extensive. It  
22 wasn't expensive to do so. But I am not sure of  
23 that.

24 Q Does Javier Cano work as an employee of  
25 International Semillas? 08:20:53

1 A No. 08:20:59

2 Q Does David Garcia Sinova work as an

3 employee of International Semillas?

4 A Can you repeat the name?

5 Q David Garcia Sinova. 08:21:23

6 A No.

7 Q Do you know David Garcia Sinova?

8 A Practically speaking, very, very slightly.

9 Almost not at all.

10 Q Who does David Garcia Sinova work for? 08:21:56

11 A I don't know.

12 Q Who is the group of people who worked with

13 Javier Cano to perform the strawberry crosses in

14 2014?

15 A In general, not in 2014, but rather in 08:23:12

16 general, it seems to me that I understood that they

17 were friends of his, producers, or they were from

18 some nursery. People who didn't so much work with

19 him but rather who would collaborate with him on

20 specific projects. 08:23:41

21 Q What are the names of the people who

22 worked with Javier Cano to perform the strawberry

23 crosses in 2014?

24 A Again in 2014?

25 Q Yes. 08:24:18

OUTSIDE COUNSEL'S EYES ONLY

1 Semillas provide Javier Cano? 10:17:37

2 A I've just told you in the previous answer.

3 Q Describe the legal support International  
4 Semillas provided to Javier Cano.

5 A I've already told you that in the previous 10:18:12  
6 answer.

7 What else do you want to know?

8 Q You told me International Semillas  
9 provided legal support to Javier Cano. Exactly what  
10 type of legal support did International Semillas 10:18:21  
11 provide to Javier Cano?

12 A Acting as the manager of a strawberry  
13 program.

14 Q There is no legal contract between Javier  
15 Cano and International Semillas, is there? 10:19:22

16 A No. I have said orally before. Orally.

17 Q What monetary support has International  
18 Semillas provided Javier Cano?

19 A None.

20 Q What activity support has International 10:20:11  
21 Semillas provided Javier Cano?

22 A None.

23 Q International Semillas performed CBC  
24 business on CBC's behalf in Spain, correct?

25 MR. LIPPETZ: Objection. Form. 10:21:04



OUTSIDE COUNSEL'S EYES ONLY

1 the record. The time, 11:12. 11:12:31  
2 (Recess, 11:12 a.m. - 11:41 a.m.)  
3 THE VIDEO OPERATOR: This will mark the  
4 beginning of Disk 3 to the deposition of Jose  
5 Pellicer. We are going back on the record. The 11:42:10  
6 time is 11:41.  
7 BY MR. EWERDT:  
8 Q Mr. Pellicer, does Patrick Nielson  
9 represent International Semillas?  
10 A I beg your pardon. What was the question 11:42:51  
11 again?  
12 Q Does Patrick Nielson represent  
13 International Semillas?  
14 A Patrick Nielson, no.  
15 Q Has International Semillas received any 11:43:13  
16 legal advice from Patrick Nielson?  
17 MR. LAMBAS (Interpreted): Objection.  
18 That violates attorney-client privilege.  
19 BY MR. EWERDT:  
20 Q Mr. Pellicer, I'm not asking for any 11:43:39  
21 content of the communications you've had with any of  
22 your attorneys.  
23 I'm asking whether or not International  
24 Semillas has received any legal advice from Patrick  
25 Nielson. Yes or no? 11:44:00

OUTSIDE COUNSEL'S EYES ONLY

1           A    Advice?  I practically don't know Patrick           11:44:30  
2   Nielson.  I don't have any communication with him.  
3   I know who he is, but -- I know who he is, but...

4           Q    Has International Semillas received any  
5   legal advice from anyone at the Jones Day law firm,           11:44:51  
6   yes or no?

7           A    I think that there has been some  
8   communication, some conversation, but -- yes,  
9   something, but very little.

10          Q    What legal advice has International           11:45:53  
11   Semillas received from the Jones Day law firm?

12               MR. LIPPETZ:  Objection.

13               MR. MARTINKUS:  Objection on behalf of  
14   International Semillas.  It invades the  
15   attorney-client privilege.           11:46:04

16               MR. LIPPETZ:  Jim, are you --

17               MR. LAMBAS (Interpreted):  I object.  It  
18   violates attorney-client privilege.

19               MR. LIPPETZ:  Mr. Martinkus or  
20   Mr. Sanchez, are you going to instruct the witness           11:46:37  
21   not to answer the question?

22               MR. MARTINKUS:  If he persists in asking  
23   the question, I will instruct the witness.

24               MR. LAMBAS (Interpreted):  I will limit  
25   myself to warning that that question may invade the           11:47:23



OUTSIDE COUNSEL'S EYES ONLY

1 Q For what purpose was International 11:58:12  
2 Semillas created?

3 A International Semillas was created for the  
4 purpose of having a legal instrument to get  
5 investment, to support activities, to support 11:59:32  
6 interesting projects, some of them -- well, in  
7 principle, in the United States, in Illinois, close  
8 to another company that was there as well, right?  
9 And I was there.

10 (Question not answered): 12:00:00

11 Q What assets does International Semillas  
12 have?

13 MR. MARTINKUS: Objection as to relevancy,  
14 and it violates the right to privacy. That's  
15 irrelevant. 12:00:21  
16 BY MR. EWERDT:

17 Q Please answer my question.

18 MR. MARTINKUS: I instruct the witness not  
19 to answer the question.

20 MR. EWERDT: On what basis? 12:00:41

21 MR. MARTINKUS: The basis I already  
22 recited in the record. It's not relevant to any  
23 issue before the court, and it's private information  
24 that you're not entitled to.

25 /// 12:00:54

Page 77

OUTSIDE COUNSEL'S EYES ONLY

1 BY MR. EWERDT: 12:00:54

2 Q Mr. Pellicer, are you going to follow the  
3 instruction of your attorney, or are you going to  
4 answer my question?

5 A I'm going to follow my attorney's 12:01:26  
6 instructions.

7 (Question not answered):

8 Q Does International Semillas have any  
9 operations?

10 A That's the same question as before. 12:01:54

11 Q Before, I asked you about assets. Now I'm  
12 asking if International Semillas has any operations.

13 A My answer is that the type of question  
14 fall into that same field as the one before. And  
15 therefore, I will not answer. 12:02:40

16 Q Your attorney has not instructed you to  
17 not answer my question.

18 Are you refusing to answer my question  
19 without an instruction from your attorney?

20 A Yes. 12:03:23

21 (Question not answered):

22 Q Does International Semillas have any  
23 businesses?

24 MR. MARTINKUS: I am going to object at  
25 this point. 12:03:42

Page 78

## OUTSIDE COUNSEL'S EYES ONLY

1           It seems this is a continuous line of           12:03:42  
2       questioning that's not relevant to any issues before  
3       the court in this case, and we're over now. The  
4       extended nature of these questions does suggest that  
5       you're trying to get private information that you're       12:03:53  
6       not entitled to. So I will instruct the witness not  
7       to answer.

8           MR. LAMBAS (Interpreted): With the  
9       objective of fortifying the previous objection, we  
10      also object to the extent that Mr. Pellicer is a       12:05:34  
11      member of the board of International Semillas, and  
12      he has the responsibility to keep confidential its  
13      businesses, its know-how, and its investments.

14           And as long as there is no concrete  
15      evidence that this has something to do with the       12:06:05  
16      matter being litigated right now, he cannot  
17      indiscriminately answer any question about the  
18      company's businesses.

19      BY MR. EWERDT:

20           Q    Does International Semillas have any       12:06:26  
21      investments relating to strawberry breeding?

22           A    Is this question referring to the  
23      relationship with CBC?

24                    (Question not answered):

25           Q    My question is, generally, does       12:07:20

OUTSIDE COUNSEL'S EYES ONLY

1 International Semillas have any investments relating 12:07:22  
2 to strawberry breeding?

3 MR. MARTINKUS: I'm going to object as  
4 well. If the question was tailored to investments  
5 relating to CBC, it may fall within the relevancy 12:07:42  
6 concept.

7 MR. EWERDT: Mr. Martinkus, are you  
8 instructing the witness not to answer?

9 MR. MARTINKUS: Yes. Yes, as long as you  
10 do not modify the question to have some relationship 12:08:15  
11 to the issues in this case.

12 MR. LAMBAS (Interpreted): And for my  
13 part, I would also like to ask my distinguished  
14 colleague from the University of California at Davis  
15 that the matters in this process be made concrete so 12:09:03  
16 they can be pertinent to it.

17 (Question not answered):

18 BY MR. EWERDT:

19 Q Mr. Pellicer, does International Semillas  
20 have any investments other than in CBC? 12:09:18

21 A That is a confidential matter.

22 Q Are you refusing to answer my question  
23 without an instruction from your attorney?

24 MR. MARTINKUS: We instruct him not to  
25 answer. 12:09:52

Page 80



OUTSIDE COUNSEL'S EYES ONLY

1 MR. LAMBAS (Interpreted): I would like to 12:10:20  
2 make it clear on the record that he has answered  
3 without instruction of any attorney on this, and has  
4 expressed that he sees himself bound by his  
5 obligations, and therefore the privilege of keeping 12:10:40  
6 the confidence of trade secrets.

7 BY MR. EWERDT:

8 Q Mr. Pellicer, does International Semillas  
9 own any property of any kind?

10 A No. 12:11:23

11 Q Does any other person or company besides  
12 yourself have an ownership interest in International  
13 Semillas?

14 A We are two people and one company.

15 Q Besides yourself, who is the other person 12:12:07  
16 and other company with an ownership interest in  
17 International Semillas?

18 A The other company is an American company,  
19 GLI [sic], and the other person is a natural person,  
20 a Spaniard. 12:12:57

21 Q The other person is Juan Cano, isn't he?

22 A Juan Luis. Juan Luis.

23 Q The other person is Juan Luis Cano Pecci,  
24 isn't he?

25 A Yes. 12:13:35

Page 81



OUTSIDE COUNSEL'S EYES ONLY

1 Q Has anyone requested documents from 12:16:36  
2 International Semillas in relation to the CBC  
3 lawsuit against the University of California?

4 MR. LAMBAS (Interpreted): Sorry. Please  
5 clarify. Who has asked for what? Who has asked for 12:17:09  
6 what?

7 BY MR. EWERDT:

8 Q Has anyone at CBC requested documents from  
9 International Semillas in relation to the CBC  
10 lawsuit against the University of California? 12:17:23

11 A You see, the thing is, I don't understand  
12 your question. I don't understand exactly what your  
13 question is asking.

14 Somebody has asked for information?  
15 Somebody from CBC has asked for information from 12:18:12  
16 International Semillas? Is that what you're asking?

17 Q I'm asking you whether on anyone at CBC  
18 has requested documents from International Semillas  
19 in relation to the CBC lawsuit against the  
20 University of California. 12:18:33

21 A I don't know. I have no proof thereof.

22 Q Has anyone at CBC requested information  
23 from International Semillas relating to strawberry  
24 breeding performed by International Semillas?

25 MR. LAMBAS (Interpreted): I object. The 12:19:53

Page 83

## OUTSIDE COUNSEL'S EYES ONLY

1 question starts this way: "Has anyone," and then it 12:19:55  
2 goes on.

3 But the witness does not know who has  
4 asked for what.

5 BY MR. EWERDT: 12:20:13

6 Q The question is not limited to anyone.  
7 The question is, has anyone requested information  
8 from International Semillas relating to strawberry  
9 breeding by International Semillas?

10 MR. LAMBAS (Interpreted): I will allow 12:21:02  
11 myself to advise the witness that he must answer  
12 based on what he knows.

13 THE WITNESS: The answer is that as far as  
14 I know, no. That is to say, I don't know, unless  
15 I'm ignorant of the fact. 12:21:39

16 BY MR. EWERDT:

17 Q Please turn to the document behind No. 68  
18 in the small binder. That should be on your table.

19 I'm going to mark as Exhibit No. 68 to the  
20 deposition of Mr. Pellicer a document titled "Order 12:22:06  
21 Regarding Joint Discovery Letters," that says  
22 "Document No. 78" on the top.

23 (Exhibit 68 was marked for identification  
24 and is attached hereto.)

25 MR. LIPPETZ: I want to make a statement 12:22:51

Page 84

OUTSIDE COUNSEL'S EYES ONLY

1 on the record while he's looking at that. 12:22:52

2 MR. CHIVVIS: No, no.

3 MR. LIPPETZ: There's no question pending.

4 Per the parties' agreement, assuming that

5 Mr. Pellicer's time is allotted for today, the 12:23:06

6 University's time allotment is up, and it is my turn

7 to ask questions of Mr. Pellicer. I request the

8 University turn over the questioning to me.

9 BY MR. EWERDT:

10 Q Mr. Pellicer -- 12:23:55

11 MR. LIPPETZ: Are you refusing to

12 turn over the questions to me?

13 MR. EWERDT: Let me finish my line of

14 questioning.

15 MR. LIPPETZ: No. Your time is up. You 12:24:08

16 haven't asked a question. It's now my time to ask a

17 question.

18 MR. EWERDT: I just introduced an exhibit.

19 MR. LIPPETZ: I don't care. Your time is

20 up. No, no. Are you refusing to turn over the 12:24:16

21 questions to me?

22 BY MR. EWERDT:

23 Q Mr. Pellicer --

24 MR. LIPPETZ: Hold on. Hold on. I have a

25 right to know the answer to the question. 12:24:22

Page 85

OUTSIDE COUNSEL'S EYES ONLY

1 I'm going to ask a question. 12:24:23  
2 Mr. Pellicer --  
3 MR. CHIVVIS: Excuse me. Excuse me. He  
4 just introduced an exhibit --  
5 MR. LIPPETZ: I don't care. 12:24:28  
6 MR. CHIVVIS: -- and did not ask any  
7 questions about it. He is not done with his  
8 deposition.  
9 MR. LIPPETZ: The time is up.  
10 MR. CHIVVIS: You cannot try to interrupt 12:24:34  
11 him asking questions about this exhibit by just  
12 unilaterally taking over the questioning, Greg. I  
13 will not allow that to happen.  
14 MR. LIPPETZ: Well, it's not necessarily  
15 your permission. 12:24:43  
16 MR. CHIVVIS: You cannot just insert  
17 yourself into the questioning.  
18 MR. LIPPETZ: Then I'm going to make a  
19 statement.  
20 MR. CHIVVIS: No. No. 12:24:49  
21 MR. LIPPETZ: The University is in  
22 violation of a stipulation and in violation of the  
23 Federal Rules. We reserve our right to strike the  
24 entirety of the deposition because we were not given  
25 the chance to conduct an adequate cross-examination 12:24:59

OUTSIDE COUNSEL'S EYES ONLY

1 to answer you. 13:04:47

2 So in principle it seems so, but I don't  
3 know so. I would have to study this over in detail,  
4 and I would be able to give you a concrete answer.

5 This way, I don't know -- I don't know 13:05:06  
6 how...

7 BY MR. LIPPETZ:

8 Q Who negotiated this agreement for  
9 International Semillas?

10 MR. EWERDT: Objection. Leading. 13:05:26

11 THE WITNESS: As I have said previously,  
12 Javier would inform us, and tacitly, we would  
13 authorize him to carry on with the negotiations, and  
14 he would come to agreements because they seemed like  
15 interesting ones to us. 13:06:17

16 But he was the one who would talk it over  
17 and come to some agreement. And then later on, we  
18 would see them ourselves.

19 BY MR. LIPPETZ:

20 Q Is Javier Cano the person affiliated with 13:06:44  
21 International Semillas that is most familiar with  
22 this agreement?

23 MR. EWERDT: Objection. Form and leading.

24 THE WITNESS: Could you repeat a word  
25 there at the beginning that I did not understand? 13:07:17

Page 98



## OUTSIDE COUNSEL'S EYES ONLY

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath; that  
8 a record of the proceedings was made by me using  
9 machine shorthand which was thereafter transcribed  
10 under my direction; that the foregoing transcript is  
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to  
13 the original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [ ] was [X] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21  
22 Dated: 3/9/17

23 Carla Soares

24 CARLA SOARES

25 CSR No. 5908

Page 110